

## CHAPTER 5.

### Analysis of MBE/WBE/DBE Availability

BBC analyzed the relative availability of minority- and women-owned firms that are ready, willing and able to perform GDOT prime contracts and subcontracts. Chapter 5 contains six parts:

- A. Purpose of the availability analysis and definitions of MBEs, WBEs and potential DBEs;
- B. Information on firms available for GDOT work;
- C. Number of minority-, women- and majority-owned firms included in the availability database;
- D. Calculation of MBE/WBE availability as inputs to the disparity analysis;
- E. Base figure for overall goal for DBE participation in FHWA-funded contracts; and
- F. Implications for any DBE contract goals.

Appendices C and J provide supporting information.

#### **A. Purpose of the Availability Analysis and Definition of MBEs, WBEs and Potential DBEs**

BBC developed information on the availability of minority-, women- and majority-owned firms for GDOT contracts as an input for the disparity analysis and for developing a base figure for GDOT's overall goal for DBE participation.

**Input for the disparity analysis.** In the disparity analysis, BBC compares the percentage of GDOT contract dollars going to MBEs and WBEs (for each racial/ethnic/gender group) to the percentage of dollars that might be expected to go to MBE/WBEs given their relative availability for specific types and sizes of GDOT prime contracts and subcontracts.

- In the disparity study, the actual percentage of dollars going to MBEs and WBEs is referred to as *utilization*.
- The percentage of dollars that might be expected to go to MBEs and WBEs is referred to as *availability*.
- The disparity analysis compares *utilization* and *availability* to identify whether there was a disparity between the dollars actually going to MBEs and WBEs and what might be expected based upon the availability analysis.

BBC examined the availability of minority-, women- and majority-owned firms for each GDOT prime contract and subcontract to calculate the availability benchmarks for use in the disparity analysis, as explained later in this chapter.

**Definition of MBEs and WBEs.** As discussed in Chapter 1, the disparity study follows the definitions of specific minority groups contained in 49 CFR Part 26. The study team separately examined utilization and availability for African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and white women-owned firms.

The availability benchmarks for the disparity analysis count firms as minority- and women-owned regardless of whether they are or could be certified as DBEs. Most minority- and women-owned firms doing business in Georgia are not currently certified.<sup>1</sup> BBC used the same methodology to count firms owned by minorities and women as MBEs and WBEs in both the utilization and the availability analyses.

**Definition of majority-owned firms.** “Majority-owned firms” in the disparity study are businesses that are not owned by minorities or women.

Majority-owned firms include any white male-owned firms certified as disadvantaged business enterprises.

**Definition of DBEs.** Disadvantaged business enterprises (DBEs) are businesses that are certified as such in Georgia (which means that they are certified as being below revenue and personal net worth limits included in 49 CFR Part 26). Because implementation of the Federal DBE Program requires GDOT to track DBE utilization, BBC reports certain utilization data for DBE-certified firms. It is not proper to compare utilization and availability of DBEs, however.

**Inputs for the base figure analysis related to the overall DBE goal.** When establishing its overall goal for DBE participation in its FHWA-funded contracts, GDOT must begin by calculating a “base figure” for the relative availability of DBEs.<sup>2</sup> The Final Rule effective February 28, 2011, and USDOT “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program”<sup>3</sup> explain that minority- and women-owned firms that are not currently certified but could be counted as DBEs in the base figure; however, firms that have been decertified or appear that they will soon graduate from the DBE Program should not be counted as DBEs in the base figure calculation.

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<sup>1</sup> Of the 281 MBE/WBE firms included in the availability database, 41, or about 15 percent, had DBE certification.

<sup>2</sup> 49 CFR Section 26.45 (c).

<sup>3</sup> USDOT. *Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program*  
<http://www.osdbu.dot.gov/dbeprogram/tips.cfm>

**Definition of potential DBEs.** BBC’s analysis of the base figure is the same as determining MBE/WBE availability benchmarks for the disparity analysis, except that firms are grouped into two sets: “potential DBEs” and all other firms. A small number of minority- and women-owned firms are not counted as “potential DBEs” in the base figure analysis — firms for which DBE certification has been denied, that were ineligible for the DBE Program, that graduated from the DBE Program, or that appear to have revenues in excess of the limits for DBE certification (and are not currently certified). Figure 5-1 provides further explanation of the firms that were counted as potential DBEs when calculating the base figure for GDOT’s overall DBE goal.

**Definition of “all other firms” in the base figure calculations.** In the base figure analysis, all firms that are not “potential DBEs” are categorized as “all other firms.” This includes all majority-owned firms that are not DBE certified (which is nearly all majority-owned firms) and those minority- and women-owned firms that are not currently DBE-certified and have been denied DBE certification, graduated from the DBE Program or appear to be too large for DBE certification.

#### **Figure 5-1. Definitions of potential DBEs**

To formulate the overall DBE goal, BBC included all minority- and women-owned firms as potential DBEs except for firms that had recently graduated from the DBE Program, firms that had applied for certification with GDOT and been denied or found to be ineligible, and firms that appeared to have annual revenue so high as to preclude their certification as DBEs. At the time of this study, the overall revenue limit was \$22,410,000 (three-year average for gross receipts). There were also lower revenue limits for specific subindustries according to SBA small business size standards. Only a few minority- and women-owned firms appeared to exceed these revenue limits based upon information they provided in the availability survey.

Firm owners must also meet USDOT personal net worth limits. Personal net worth of the owners of firms was not available as part of this study and thus was not considered when determining potential DBE status.

## **B. Information about Firms Available for GDOT Work**

BBC’s availability analysis focused on specific construction and engineering subindustries in Georgia. Chapter 3 discusses BBC’s identification of specific subindustries for inclusion in the availability analysis, and selection of Georgia as the relevant market area for GDOT contracting.

Once the subindustries and relevant geographic market area were determined, BBC developed a database of available firms by attempting to interview each business establishment within the relevant Georgia construction and engineering subindustries. This method of examining availability is sometimes referred to as a “custom census.” Much of the information needed for the availability analysis, including interest in GDOT work, areas of the state in which the firm bids, largest bid or contract received, and minority, female or majority ownership status, could only be collected directly from firms themselves. Appendix C of this report examines strengths and limitations of this approach to determining availability.

**Overview of the availability interviews.** BBC collected information from firm owners and managers to identify firms potentially available for GDOT work.

BBC first obtained all business establishment listings under the 8-digit industry codes maintained by Dun & Bradstreet (D&B) that were most pertinent to the subindustries involved in GDOT transportation contracts. D&B provided 14,614 business listings related to these subindustries.

BBC then worked with the telephone survey research firm Customer Research International (CRI), which performs business and consumer interviews throughout the country,<sup>4</sup> to conduct telephone interviews with the owners or managers of identified business establishments. About 9,600 D&B listings had accurate working phone numbers. CRI was able to successfully contact 4,571 (48%) of these business establishments.<sup>5</sup> About 2,500 establishments that were successfully contacted indicated they were not interested in participating in a discussion about their availability for GDOT work. More than 2,100 firms completed interviews about firm characteristics, their interest and qualifications for GDOT work and other topics. Interview topics included:

- Whether the organization was a subsidiary or branch of another company;
- Whether the organization was a private business or tribally-owned organization (and not a public agency or not-for-profit organization);
- Qualifications and interest in transportation contracting work for state and local agencies;
- Qualifications and interest in work as a prime, a subcontractor or a supplier/trucker;
- Firm specialization;
- The largest contract or subcontract bid on or performed in the past five years;
- Ability to work in specific geographic regions of Georgia;
- How long the firm has been in business; and
- Race/ethnicity/gender of firm ownership.

Appendix C provides an example of a telephone survey instrument.

Firm representatives were offered the option of answering questions that were e-mailed or faxed if they preferred not to complete an interview over the phone. (About 2 percent of interviews were completed through e-mail or fax.)

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<sup>4</sup> CRI's work includes many tens of thousands of business interviews as part of BBC disparity studies for other state and local agencies.

<sup>5</sup> Other establishments could not be reached after multiple attempts (see Appendix C) or could not make a responsible staff member available to complete the interview.

### C. Number of Minority-, Women- and Majority-owned Firms in the GDOT Availability Database

A useful starting point in the availability analysis is to simply count the number of minority-, women- and majority-owned firms in the availability database for the GDOT disparity study.

**Total number of firms included in the availability database.** The availability database for the GDOT study totaled 929 firms after screening for qualifications and interest in work with government agencies and firm location. The fundamental availability criteria for inclusion in the database were:

- Performance of work related to transportation contracting (in the lines of business pertinent to this study);
- Indication of qualifications and interest in performing work for state or local agencies in the future, as a prime contractor and/or subcontractor (or supplier or trucker);
- Past performance or bidding on work (in the public or private sector); and
- An office in Georgia.

The types of information above were gathered from the availability interviews with Georgia firms.

**Minority-, women- and majority-owned firms in the availability database.** Figure 5-2 provides race/ethnicity/gender information for the firms in the availability database for GDOT contracts and subcontracts. Of the 929 firms counted as potentially available, 281 indicated that they were minority- or women-owned. As shown in Figure 5-2, African American-owned firms comprised 14 percent and white women-owned firms were 11 percent of the firms in the availability database. Other minority-owned firms totaled about 5 percent of the firms. MBE/WBEs overall accounted for 30 percent of the firms in the availability database.

**Figure 5-2.**  
**MBE/WBEs as a percentage**  
**of firms available for GDOT**  
**contracts and subcontracts,**  
**by race, ethnicity and gender**

Source: BBC Research & Consulting from  
Availability Database.

Race, ethnicity and gender	Total MBE/WBE	
	Number of firms	Percent of firms
African American-owned	131	14.1 %
Asian-Pacific American-owned	12	1.3
Subcontinent Asian American-owned	12	1.3
Hispanic American-owned	14	1.5
Native American-owned	9	1.0
<b>Total MBE</b>	178	19.2 %
WBE (white women-owned)	103	11.1
<b>Total MBE/WBE</b>	281	30.2 %
Total other firms	648	69.8
<b>Total firms</b>	929	100.0 %

The data in Figure 5-2 reflect a simple count of firms, with no analysis of a firm's availability for specific types, sizes or locations of GDOT contracts. Thus, the percentages shown in Figure 5-2 are presented for informational purposes and are not the measures of MBE and WBE availability used as

benchmarks in the disparity analysis. Additional analyses were required to develop these availability benchmarks, as described below.

**Database designed to provide availability figures, not to identify every firm available for GDOT contracts.** The availability database is suitable for producing statistically reliable availability benchmarks for use in determining whether there were disparities in GDOT's utilization of MBEs and WBEs and for calculating a base figure for the overall DBE goal. This methodology has been accepted in federal court, including the favorable review of a BBC disparity study for the California Department of Transportation by the Federal District Court in *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*<sup>6</sup>

The availability data allow BBC to develop a representative depiction of firms qualified and interested in state and local transportation agency work, but it should not be considered an exhaustive list of every minority-, woman- and majority-owned firm that could participate in a GDOT contract. Reasons for this are further discussed in Appendices C and J.

**Database designed for purposes of the disparity analysis and establishing a base figure, not for setting DBE project goals.** Some of the public comments concerning the draft disparity study report correctly pointed out that the availability database is not limited to firms registered or prequalified to do business with GDOT. It also does not identify every construction and engineering-related firm that is currently certified with GDOT as a DBE. One of the reviewers recommended an approach to the availability analysis that would only include as available those firms that were, at a minimum, registered with GDOT. (Appendix L summarizes public comments concerning the draft report.)

Such an approach might be suitable when examining DBE availability for purposes of setting a DBE goal on a GDOT project, but it is not appropriate in this study for the disparity analyses and for identifying an overall goal for DBE participation. As availability provides a benchmark used to assess utilization of MBEs and WBEs in an agency's contracts, it is best measured independent of any of that agency's vendor lists or prequalification processes.

- For example, if an agency was more likely to deny prequalification or registration to minority- and women-owned firms than to similarly-qualified majority-owned firms (or if it tended to set any prequalification dollar limits for MBE/WBEs lower than for majority-owned firms, for example), the agency's list of prequalified or registered firms would not be an appropriate source for determining an overall DBE goal or an availability benchmark for purposes of the disparity analysis. Any resulting utilization of minority- and women-owned firms in that agency's contracts could only be determined by comparing that utilization with an independent measure of MBE/WBE availability.
- In addition, some agencies place firms on a list of potential vendors or prequalify firms based in part on firms' past success obtaining work with that agency. If firms that have been utilized by the agency are more likely to be on that agency's list of potential vendors, any measure of availability based on such data is not independent of past utilization. In fact, GDOT's prequalification and registration of potential prime contractors and subcontractors considers past experience of the firm with GDOT.

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<sup>6</sup> U.S.D.C., E.D. Cal, Civil Action No. S-09-1662, Slip Opinion (E.D. Cal. April 20, 2011).

Therefore, the list of firms prequalified or registered by GDOT is not an independent source of firm availability information.

### **Possibility of underrepresentation of MBE/WBEs in the final availability database.**

Appendix C of the report explains the possibility that MBEs and WBEs were slightly underrepresented in the final database of available firms. However, BBC concludes that this potential underrepresentation of MBE/WBEs does not significantly affect the analyses. One reviewer of the draft report presented a number of reasons why BBC should have used a stronger word than “possible” when describing this underrepresentation (see Appendix L for more discussion of public comments concerning the draft report).

## **D. Calculation of MBE/WBE Availability as Inputs to the Disparity Analysis**

After developing the availability database, BBC analyzed that information to develop dollar-weighted availability benchmarks for use in the disparity analysis.

**Purpose.** The availability analysis calculates the percentage of contract dollars that might be expected to go to MBE/WBEs given the availability of minority-, women- and majority-owned firms for the specific types and sizes of a particular set of GDOT prime contracts and subcontracts.

**Steps to calculating availability.** For any given GDOT prime contract, subcontract or other procurement (collectively referred to here as “contract elements”), only a subset of the GDOT firms in the availability database were counted as potentially available for that work.

As described below, BBC first examined the characteristics of the specific contract element, including type of work involved, contract size, location and contract date. BBC then identified firms in the availability database that performed work of that type, size, location and in that role (as a prime contractor or subcontractor), and were in business in the year the contract was awarded. This is a bottom up, contract-by-contract approach to determining availability measures specific to particular sets of GDOT contracts. The example in Figure 5-3 shows how BBC calculated availability for a subcontract on a specific GDOT project.

### **Figure 5-3. Example of an availability calculation for a GDOT subcontract**

On a GDOT contract issued in 2010, the prime contractor awarded a subcontract for surveying and mapping work for \$12,750. To determine the overall availability of minority- and women-owned firms for this subcontract, the study team identified firms in the availability database that:

- a. Were in business in 2010;
- b. Indicated that they performed surveying and mapping work;
- c. Reported bidding on work of similar size or greater in the past;
- d. Reported qualifications and interest in working as a subcontractor on local government agency projects; and
- e. Indicated that they could perform work in that region.

The study team found 145 firms in the availability database that met these criteria. Of those firms, 30 (21%) were minority- or women-owned. BBC applied 21 percent as the MBE/WBE availability figure for this subcontract.

This process was completed for all prime contract and subcontracts included in the disparity analysis, weighting the results for each contract element by the dollars for that prime contract or subcontract.

1. For each of the more than 4,800 GDOT prime contracts and subcontracts, BBC determined the type of work, contract role (prime/sub) and size of the work.
2. BBC then identified firms in the availability database that reported they:
  - Are qualified and interested in performing that role (prime or subcontractor) for the specific type of work, for local governments;
  - Have bid on or performed work of that size;
  - Report that they could work in that region; and
  - Were in business in the year the contract was awarded.
3. BBC counted the number of MBEs (by race/ethnicity), WBEs and majority-owned firms among all firms in the database available for that specific type of work.
4. The study team then translated the numeric availability of firms for a contract element into percentage availability for the contract element (e.g., the percentage of firms counted as available for a contract that are MBEs and WBEs).

This process was repeated for each prime contract and subcontract.

5. BBC weighted the relative availability for each prime contract and subcontract by the dollars of work corresponding to each contract element.
  - For MBEs (for each race/ethnic group) and for WBEs, BBC multiplied percentage availability for each GDOT contract element by the dollars associated with the contract element;
  - Added the results across contract elements; and
  - Divided by total dollars for all GDOT contract elements to produce a dollar-weighted estimate of overall availability for MBE/WBEs and for each MBE/WBE group.



**Results for GDOT contracts.** Overall, MBE/WBE availability is 22 percent for GDOT contracts. Figure 5-4 shows complete results, including availability for GDOT contracts by race/ethnic group. These values serve as benchmarks to evaluate the actual percentage of GDOT contract dollars going to MBEs and WBEs from January 2009 through June 2011 (pertains to combined FHWA- and state-funded contracts).

**Figure 5-4.**  
**Dollar-weighted availability of firms for GDOT contracts, 2009 – June 2011, by race, ethnicity and gender**

Note: See Figure K-2 in Appendix K.  
Source: BBC Research & Consulting from Availability Database.

Race, ethnicity and gender	Utilization benchmark (availability %)
African American-owned	14.1 %
Asian-Pacific American-owned	1.5
Subcontinent Asian American-owned	0.6
Hispanic American-owned	0.5
Native American-owned	<u>0.1</u>
<b>Total MBE</b>	16.8 %
WBE (white women-owned)	<u>5.2</u>
<b>Total MBE/WBE</b>	22.0 %

**Unique availability benchmark for each set of contracts.** BBC did not just conduct a disparity analysis for all GDOT contracts, but also performed analyses for subsets of contracts (e.g., separating FHWA- and state-funded contracts, as well as construction contracts and engineering-related contracts and prime contracts and subcontracts). Therefore, BBC needed to determine availability benchmarks for each set of GDOT contracts and subcontracts examined in the disparity analysis. A number of tables in Appendix K report MBE/WBE availability and disparity analysis results for subsets of GDOT contracts and subcontracts. MBE/WBE availability varies from around 20 percent to about 31 percent depending upon the work examined. In general:

- MBE/WBE availability is greater for small GDOT contract elements;
- MBE/WBE availability is greater for subcontracts; and
- MBE/WBE availability is greater for state-funded contracts (26%) than for FHWA-funded contracts (22%).

**Availability benchmarks improve upon what would be derived from a simple “headcount” of firms.** The availability benchmark for GDOT contracts identified above (22%) is lower than the percentage of firms in the availability database that are MBE/WBEs (30%). There are a number of reasons why the overall availability benchmark is lower than what might be calculated by just counting MBEs and WBEs and dividing the sum by the total number of firms in the availability database. The most important reasons are:

- The availability analysis considered *specialization of work* involved in GDOT contracts;
- BBC considered a firm’s qualifications and interest in *prime contract* work and *subcontract* work when determining availability for a GDOT contract element;
- The availability analysis considered *size of contracts* that firms have bid on when counting firms as available for a contract element;

- Consideration of the *geographic location* of the work and the firms indicating that they could perform work in that region; and
- BBC *dollar-weighted results* of the contract-by-contract availability analyses when determining an overall availability figure.

**Specialization of work.** USDOT suggests considering the availability of firms based on their ability to perform specific types of work. The example USDOT gives in “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program” is as follows: If 90 percent of an agency’s contracting dollars is spent on heavy construction and 10 percent on trucking, the agency would calculate the percentage of heavy construction firms that are MBEs or WBEs and the percentage of trucking firms that are MBEs or WBEs, and weight the first figure by 90 percent and the second figure by 10 percent when calculating overall MBE/WBE availability.<sup>7</sup>

BBC examined more than 20 areas of specialization (“subindustries”) in the GDOT disparity study. The study team determined the work type for each prime contract and subcontract from the information in GDOT contract records and the primary line of work of the prime contractor or subcontractor performing the work item. Some subindustries reflect grouping of certain specializations.

Once BBC identified the work type for each prime contract and subcontract, the study team matched firms performing that type of work with the work type. Study team members conducting the availability interviews asked owners and managers of construction-related firms to identify the types of work they perform based upon the following work descriptions:

- Grading, excavation, drainage or other land prep;
- Paving, concrete work, or other heavy construction related to road work;
- Bridge or elevated highway construction or repair;
- Underground utilities;
- Electrical work related to highways such as lighting and signal installation;
- Painting, striping or pavement marking;
- Installation of highway fences, guardrails or signs;
- Temporary traffic control;
- Trucking and hauling for road projects; and
- Grassing or erosion control.

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<sup>7</sup> Id.

Interviewers also asked if the firm sold:

- Asphalt, concrete or other paving materials;
- Erosion control materials;
- Traffic or highway signs;
- Traffic signals;
- Fence or guardrail materials;
- Steel; and
- Petroleum.

Interviewers asked firms performing engineering-related services whether they conducted one or more of the following types of work:

- Transportation planning;
- Bridge design;
- Highway design;
- Soils and materials testing;
- Construction management;
- Surveying and mapping;
- Erosion control planning and inspection;
- Mass transit operation and design; and
- Traffic control systems.

As with the interviews of construction firms, engineering-related services firms could identify more than one work type, and could point out other services they performed.

**Qualifications and interest in prime contractor and subcontractor work.** BBC collected information on whether firms reported qualifications and interest in working as a *prime contractor* and as a *subcontractor*. In BBC's availability analysis for GDOT construction and engineering contracts:

- Only firms reporting that they are qualified and interested in working with GDOT as a prime contractor are counted as available for GDOT-awarded prime contracts;
- Only firms reporting qualifications and interest in working with GDOT as a subcontractor, trucker/hauler or supplier are counted as available for these contract elements;
- Firms reporting qualifications and interest in both contract roles can be counted as available for either role.

**Consideration of the size of contracts and subcontracts.** BBC considered the size of contracts or subcontracts that a firm had bid on in the previous five years (referred to as "bid capacity") when determining whether to count that firm as available for a GDOT contract or subcontract of a certain size. When counting available firms for a prime contract or subcontract, BBC considered whether a

firm had previously worked or bid on a project of equivalent size (in dollars) to the specified contract or subcontract element.

BBC used this approach to examining bid capacity in the California Department of Transportation disparity study that was favorably reviewed in *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*. BBC's approach is consistent with guidance from the U.S. Court of Appeals for the Federal Circuit regarding capacity of firms to perform different sizes of contracts (see *Rothe Development Corp. v. Department of Defense*).<sup>8</sup>

**Location of contract.** GDOT provided information on the district in which each contract was performed. BBC considered a firm available for work in a region if it indicated that it could do work or serve customers in that region. The definitions of regions are as follows:

- **Atlanta Metro Area (GDOT District 7).** This includes Fulton, DeKalb, Rockdale, Clayton, Cobb, and Douglas Counties.
- **Northwest Georgia (GDOT District 6).** This region extends from the Chattanooga Valley to the Cartersville area.
- **Northeast Georgia (GDOT District 1).** This includes the Gainesville, Lawrenceville, and Athens areas.
- **Middle Georgia (GDOT Districts 2 and 3).** This region extends from the Columbus to Augusta areas.
- **Southeast Georgia (GDOT District 5).** This region extends from the Savannah area to the Florida border.
- **Southwest Georgia (GDOT District 4).** This includes the Albany and Valdosta areas.

Note that BBC combined several of these regions when reporting disparity results.<sup>9</sup>

**Dollar-weighting results.** BBC examined availability contract-by-contract and subcontract-by-subcontract, and then dollar-weighted the results for each specific set of contracts. In calculating overall availability, the availability results for a large prime contract or subcontract contribute more to the overall calculation than small contract elements.

This is the same approach that BBC used in the California Department of Transportation disparity study that was favorably reviewed in the case cited above. “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program” also suggests a dollar-weighted approach to determining availability.<sup>10</sup>

The effect of considering bid capacity and then dollar-weighting availability results is lower availability figures for MBEs and WBEs than if BBC had simply used a simple “head count” of MBEs, WBEs and majority-owned to determine availability.

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<sup>8</sup> *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

<sup>9</sup> Disparity analysis results reported for North Georgia, the Atlanta Metro Area, Middle Georgia and South Georgia.

<sup>10</sup> *Id.*

**Availability benchmarks are determined for MBE/WBEs and not just certified DBEs.**

Analysis of utilization and availability of minority- and women-owned firms (by race, ethnicity and gender) allows one to analyze whether there are disparities affecting minority- and women-owned firms.

- In other words, the possibility that race or gender discrimination affects utilization of firms is analyzed by comparing outcomes for firms based on the race/ethnicity/gender of their ownership, not certification status.
- Firms may be discriminated against because of the race or gender of the business owner regardless of whether that owner has applied for DBE certification.
- Furthermore, analysis of whether firms face disadvantages based on the race/ethnicity/gender of the firm owner counts the most successful, highest-revenue minority- and women-owned firms in the statistics for all minority- and women-owned firms. A disparity analysis focusing on DBEs would improperly compare outcomes for certified DBEs (by definition, “economically disadvantaged” minority- and women-owned firms) with all other firms (combining majority-owned firms with very successful firms owned by minorities and women). One might find disparities for any group of firms for which membership is limited to low-revenue firms.<sup>11</sup>

Another reason not to base the disparity analysis on DBEs is that white male-owned firms can be certified as DBEs under the Federal DBE Program.

The courts that have reviewed utilization and availability analyses have accepted analyses based on race/ethnicity/gender ownership and not certification status.

**Coding of minority women-owned firms.** In the GDOT disparity study, BBC combines firms owned by minority women and firms owned by minority men into “minority-owned firms.” “WBEs” are firms owned by white women. Figure 5-5 discusses BBC rationale for that classification.

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<sup>11</sup> An analogous situation concerns analysis of possible wage discrimination. A disparity analysis that would compare wages of minority employees to wages of all employees should include both low- and high-wage minorities in the statistics for minority employees. If the analysis removed high-wage minorities from the statistics for minorities, any comparison of wages between minorities and non-minorities would likely show disparities in wage levels.

**Figure 5-5.**  
**Coding of firms owned by minority women**

Firms owned by minority women present a data coding challenge in both the availability analysis and the utilization analysis. BBC considered four options for coding firms owned by minority women:

- a. Coding these firms as both minority- and women-owned;
- b. Creating a unique group of minority female-owned firms;
- c. Grouping minority female-owned firms with all women-owned firms; and
- d. Grouping minority female-owned firms with the relevant racial/ethnic group.

BBC chose not to code the firms as both women-owned and minority-owned to avoid potential double-counting when reporting total MBE/WBE utilization and availability. Dividing each racial/ethnic group into firms owned by men versus women (e.g., African American male-owned firms, African American female-owned firms, etc.) was also unworkable for purposes of the disparity analysis because some minority groups had utilization and availability so low that further disaggregation made it more difficult to interpret results.

After rejecting the first two options, BBC then considered whether to group minority female-owned firms with the relevant minority group or with all women-owned firms. BBC chose the former — to group African American women-owned firms with all African American-owned firms, etc. “WBE” in this report refers to white women-owned firms. Any evidence of discrimination against white women-owned firms should, in general, be considered evidence of discrimination against women of any race or gender. This definition of WBEs also gives GDOT information to answer questions that often arise pertaining to utilization of white women-owned firms, such as whether a disproportionate share of work goes to firms owned by white women compared with firms owned by minorities.

## **E. Base Figure for Overall Goal for DBE Participation in FHWA-funded Contracts**

Establishing the base figure is the first step in calculating an overall annual goal for DBE participation in GDOT FHWA-funded contracts. BBC calculated the base figure using the same availability database and approach for determining MBE/WBE availability as described above, except that calculations were specific to “potential DBEs.” This methodology is consistent with court-reviewed methodologies in states including California, Illinois and Minnesota, instructions in the 2011 revisions to the Federal DBE Program, and USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”<sup>12</sup>

As Figure 5-1 explained, BBC counted firms as potential DBEs if they were certified as DBEs in Georgia or were minority- and women-owned and did not have DBE certification applications denied, had graduated from the DBE Program or appeared to be too large to meet the revenue limits for DBE certification (overall or for the specific subindustry).

It is also important to note that just one in seven of the MBE/WBE firms interviewed in the availability analysis was certified as a DBE.

**Base figure.** BBC’s availability analysis indicates that minority- and women-owned firms currently or potentially certified as DBEs might be expected to receive 19.8 percent of prime contract and subcontract dollars for GDOT FHWA-funded transportation contracts.

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<sup>12</sup> Id.

GDOT should consider 19.8 percent as the base figure for its overall goal for DBE participation if the distribution of FHWA-funded contracts for the time period covered by the goal is expected to be similar to FHWA-funded contracts from 2009 through June 2011.

**Difference from overall availability of MBE/WBEs for FHWA-funded contracts.** If BBC had counted all minority- and women-owned firms as potential DBEs, the base figure would have been 21.8 percent.

**Calculation of base figure if mix of FHWA-funded contracts will differ in the future.**

Figure 5-6 presents the construction and engineering components of the base figure for the overall DBE goal. The base figure reflects a weight of 90 percent for construction and 10 percent for engineering based on dollars of FHWA-funded contracts for 2009 through June 2011 examined in the availability analysis. If the dollars of FHWA-funded construction contracts as compared with FHWA-funded engineering-related service contracts varies in the future, GDOT may wish to apply different weights to the base figure data for each set of contracts when calculating a base figure.

Similarly, GDOT could consider adjusting the base figure if the future geographic mix of contracts were to differ substantially from the 2009 through June 2011 time period. MBE/WBE availability was several percentage points higher for contracts in North Georgia and the Atlanta Metropolitan Area than in Middle Georgia and South Georgia.

In addition, the availability analysis included a number of projects funded through the American Recovery and Reinvestment Act. When considering an overall DBE goal for the next three fiscal years, GDOT should consider how its future mix of FHWA-funded projects may differ from the 2009 through June 2011 time period.

**Figure 5-6.**  
**Construction and engineering components of base figure for GDOT FHWA-funded transportation contracts**

Note:

Weights are based dollars of FHWA-funded contracts for 2009–June 2011.

Source:

BBC Research & Consulting.

Potential DBEs	Availability percentage		
	Construction	Engineering	Total
African American-owned	14.2 %	9.2 %	13.7 %
Asian-Pacific American-owned	1.3	1.3	1.3
Subcontinent Asian American-owned	0.1	3.5	0.4
Hispanic American-owned	0.1	1.6	0.2
Native American-owned	0.1	0.0	0.1
WBE (white women-owned)	4.1	3.1	4.0
<b>Total potential DBEs</b>	19.9 %	18.7 %	19.8 %
<b>Sector weight</b>	90 %	10 %	

The 19.8 percent base figure presented in Figure 5-6 is higher than the overall DBE goals GDOT has adopted in the past, which have been around 12 percent.

**Additional steps before determining the overall annual DBE goal.** GDOT must consider whether to make a “step 2” adjustment to the base figure before determining a final overall DBE goal. The step 2 adjustment can be upward or downward. Chapter 10 of the report presents information GDOT should consider in choosing whether to make such an adjustment.

## **F. Implications for any DBE Contract Goals**

If GDOT chooses to utilize DBE contract goals in the future, it might use the availability database, the current DBE directory at that time, a newly-developed bidders list and/or other information to examine the availability of DBEs to participate in that contract. If it uses DBE contract goals, GDOT should continue to:

- Set goals on a contract-by-contract basis given the unique attributes of a contract and the availability of DBEs to perform that work.
- Set DBE contract goals only on FHWA-funded contracts (unless it establishes a new, legally-defensible program for its state-funded contracts).
- Only set DBE contract goals on contracts that have meaningful subcontracting opportunities.
- Retain flexibility in how prime contractors could comply with the contract goals program, including showing good faith efforts to meet the contract goal.